

## DEPARTMENT OF LABOR AND EMPLOYMENT

### Division of Labor

## EMPLOYMENT OPPORTUNITY ACT RULES

### 7 CCR 1103-4

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### Rule 1. Statement of Purpose

The general purpose of these Employment Opportunity Act Rules, effective July 15, 2014, is to implement the provisions of § 8-2-126, C.R.S. These rules are adopted pursuant to the Division of Labor's authority in § 8-1-107(2)(p), C.R.S., § 8-1-103(3), C.R.S., § 8-1-111, C.R.S., and § 8-2-126, C.R.S.

#### Rule 2. Definitions

**2.1** "Adverse action" means:

- (I) For an applicant for employment, denial of employment; and
- (II) For an employee, demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment; or
- (III) Any other decision for employment purposes that adversely affects an employee or applicant.

**2.2** "Consumer credit information" means a written, oral, or other communication of information bearing on a consumer's creditworthiness, credit standing, credit capacity, or credit history. "Consumer credit information" includes a credit score but does not include the address, name, or date of birth of an employee associated with a social security number. "Consumer credit information" does not include income or work history verification.

**2.3** "Credit score" means an attempted numerical quantification of a person's creditworthiness or credit history.

**2.4** "Division" means the division of labor within the department of labor and employment.

**2.5** "Employee" means every person who may be permitted, required, or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment and includes an applicant for employment.

**2.6** "Employer" has the meaning as set forth in § 8-1-101, C.R.S., and includes a prospective employer; except that "employer" does not include any state or local law enforcement agency.

**2.7** "Employment purposes" means evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee.

**2.8** "Prevailing party" means the employee who successfully brings, or the employer who successfully defends, the complaint.

**2.9** "Substantially related to the employee's current or potential job" means the information contained in a credit report is related to the position for which the employee who is the subject of the report is being evaluated because the position:

- (I) Constitutes executive or management personnel or officers or employees who constitute professional staff to executive and management personnel,

And the position involves one or more of the following:

- (A) Setting the direction or control of a business, division, unit, or an agency of a business;
  - (B) A fiduciary responsibility to the employer;
  - (C) Access to customers', employees', or the employer's personal or financial information other than information customarily provided in a retail transaction; or
  - (D) The authority to issue payments, collect debts, or enter into contracts;
- (II) Involves contracts with defense, intelligence, national security, or space agencies of the federal government; or
  - (III) Is with a bank or financial institution.

### **Rule 3. Use of Consumer Credit Information for Employment Purposes**

**3.1** An employer shall not use consumer credit information for employment purposes unless the information is substantially related to the employee's current or potential job. An employer or employer's agent, representative, or designee shall not require an employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers as a condition of employment unless:

- (I) The employer is a bank or financial institution;
- (II) The report is required by law; or
- (III) The report is substantially related to the employee's current or potential job and the employer has a bona fide purpose for requesting or using information in the credit report that is substantially related to the employee's current or potential job and is disclosed in writing to the employee.

### **Rule 4. Opportunity for the Employee to Explain Consumer Credit Information**

**4.1** When consumer credit information is substantially related to the employee's current or potential job, an employer may (but is not required to) inquire further of the employee to give him or her the opportunity to explain any unusual or mitigating circumstances where the consumer credit information may not reflect money management skills but is rather attributable to some other factor, including a layoff, error in the credit information, act of identity theft, medical expense, military separation, death, divorce, or separation in the employee's family, student debt, or a lack of credit history.

### **Rule 5. Adverse Action and Disclosure to the Employee**

- 5.1** If an employer relies, in whole or in part, on consumer credit information to take adverse action regarding the employee whose information was obtained, the employer shall disclose that fact, and the particular information upon which the employer relies, to the employee. The employer shall make the disclosure to an employee in writing or to an applicant using the same medium in which the application was made.

## **Rule 6. Complaints**

- 6.1** A person who is injured by a violation of this law may file a complaint with the division.
- 6.1.1** Anonymous complaints are not accepted by the division.
- 6.1.2** Complaints shall be filed using the division-approved form.
- 6.1.3** The complaint may only be filed by the individual (or the individual's representative) who has been directly affected by the employer's prohibited consumer credit practices; the complainant must be the specific employee or applicant whose consumer credit information was involved.
- 6.1.4** The complaint shall include the complainant's signature, contact information, and basis for the complaint. Failure to include this information on the complaint form may result in administrative dismissal of the complaint.
- 6.1.5** An employer who is subject to a complaint shall be notified in writing of the complaint by the division via U.S. postal mail. In the event that the employer cannot be contacted via U.S. postal mail, or other circumstances exist which warrant the use of other contact methods, the division shall utilize other methods to contact the employer.

## **Rule 7. Investigations**

- 7.1** Complaints shall be assigned to division investigators. Investigatory methods utilized by the division may include, but are not limited to:
- 7.1.1** Interviews of the employer, employee, and other parties;
- 7.1.2** Information gathering, fact-finding, and reviews of written submissions;
- 7.1.3** Any other techniques which enable the division to assess the employer's compliance with the law.

## **Rule 8. Initial Decisions and Civil Penalties**

- 8.1** After investigating the complaint and assessing the employer's compliance, the division investigator will issue an initial decision in writing.
- 8.1.1** The initial decision will be provided to the employer and complainant in writing.
- 8.1.2** The initial decision will contain information on the extent of the employer's compliance with the law, and will describe what provisions of the law were adhered to and/or violated.
- 8.1.3** The initial decision issued by the division investigator may award civil penalties not to exceed two thousand five hundred dollars to a prevailing party.
- 8.1.4** The initial decision will contain information on appeal rights and appeal procedures.

## **Rule 9. Appeals and Hearings**

- 9.1 The initial decision issued by the investigator may be appealed to the division.
- 9.2 Parties who appeal the initial decision are entitled to an appeals hearing and final agency decision in conformity with the Colorado Administrative Procedure Act, § 24-4-105, C.R.S.
- 9.3 A division hearing officer will preside over the hearing.
- 9.4 The decision issued by the hearing officer is considered the final agency decision. This decision may be appealed to district court.

## **Rule 10. Enforcement**

- 10.1 The director of the division of labor in the department of labor and employment shall enforce the Employment Opportunity Act and these rules.

## **Rule 11. Liability**

- 11.1 Nothing in the Employment Opportunity Act or these rules imposes any liability on a person, including a consumer reporting agency, as that term is defined in § 12-14.3-102(4), C.R.S., for providing an employer with consumer credit information.

## **Rule 12. Severability**

If any provision of these rules or their application to any person or circumstance is held illegal, invalid, or unenforceable, no other provisions or applications of the rules shall be affected that can be given effect without the illegal, invalid, or unenforceable provision or application, and to this end the provisions of these rules are severable.

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### **Editor's Notes**

#### **History**

Entire rule eff. 01/01/2014.

Rules 1, 4 – 12 emer. rules eff. 01/08/2014; expired 05/08/2014.

Entire rule eff. 07/15/2014.